IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3481 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BACHUBHAI SOBHAGYACHAND SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3481 of 2004

MR YOGESH S LAKHANI for Petitioner No. 1-3

MR AD OZA LD. PUBLIC PROSECUTOR for Respondent No. 1

NOTICE NOT RECD BACK for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.L.DAVE

Date of decision: 26/04/2004

ORAL JUDGEMENT

1. Rule. Learned Public Prosecutor Mr.A.D.Oza, waives service of notice of rule on behalf of respondent - State.

2. The applicants are seeking their release on bail after their arrest in connection with Chhani Police Station C.R.No.I-87 of 2003 for the offences punishable under Sections 406, 409, 167, 420, 467, 468, 471, 114 and 120B of the Indian Penal Code.

2.1 The applicants had earlier approached this Court seeking the anticipatory bail by preferring Criminal Misc. Application No.7767 of 2003 which was granted by this Court upon conditions. As one of the condition required the applicants to obtain regular bail from the Lower Court, they approached the Lower Court with an application for regular bail under Section 439 of the Code of Criminal Procedure and that having been rejected, they have again approached this Court with this Application.

2.2 On last occasion, it was indicated by learned Public Prosecutor that the applicants are not in judicial custody and the matter was, therefore, adjourned. Today, learned advocate for the applicants Mr.Lakhani states that the applicants had approached the Investigating Officer yesterday for surrendering to the custody. However, the Investigating Officer indicated that because of the order of anticipatory bail, he would not be able to take the applicants in custody. Therefore, the applicants have today surrendered before the learned J.M.F.C.,Baroda at 10.30 a.m. and they are in custody. Mr.Lakhani, therefore, submitted that this Court had, after considering all relevant aspects, granted anticipatory bail to the applicants and in absence of any change of circumstance, their case for regular bail may therefore be favourably considered.

3. Learned Public Prosecutor Mr.Oza also has no dispute regarding want of any change in circumstance subsequent to passing of the order granting anticipatory bail. The Investigating Officer, who is present in the Court, has also received a message that the applicants have surrendered to judicial custody.

4. Having considered the contentions raised before this Court now that the applicants are in custody, this application can well be entertained on merits. When there is no dispute about the fact that there is no change in circumstance subsequent to grant of anticipatory bail by this Court for the same

considerations, this application for regular bail deserves to be allowed, upon certain conditions.

5. It would be appropriate to note at this stage that when the applicants approached the Investigating Officer for surrendering, he ought not to have refused to take them in custody on the grounds indicated by him viz. the order passed in the anticipatory bail application. Because following that order the Investigating Officer had arrested and released the applicants on bail and the applicants' application for regular bail as required under that order was rejected by the Lower Court. The operation of the order of anticipatory bail had therefore comes to an end. In fact, it was the duty of the Investigating Officer to have arrested the applicants rather than refusing to take them in custody when they have volunteered to surrender to the custody.

6. Be that as it may, fact remains that for the reasons stated hereinabove, the applicants deserve to be bailed out on merits and therefore, application is allowed.

7. The applicants are ordered to be released on bail on their executing a personal bond of Rs.10,000/- each (Rupees Twenty Five thousand each) with a surety of like amount to the satisfaction of the Lower Court and subject to the following conditions:

(a) the applicants shall not influence the witnesses or tamper with any documents;

(b) the applicants shall not leave the India without prior permission of this Court;

(c) the applicants shall mark their presence with concerned Police Station, on first Sunday every odd numbered English Calendar Month between 9.00 a.m. to 2.00 p.m.;

(d) the applicants shall surrender their passport, if they are holding it, to the Court;

(e) at the time of execution of the bonds, the applicants shall furnish their address to the investigating officer and the court concerned and shall not change their residence till the final disposal of the case or till further orders in that regard;

(f) the applicants shall not directly or indirectly

make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

(g) the applicants shall not do any act prejudicial to the interest of the Prosecution.

10. Rule is made absolute. Direct Service is permitted.

(A.L. Dave, J.)

(vipul)